Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of	)	
the Cable Television	)	MM Docket No. 92-266
Consumer Protection and	)	
Competition Act of 1992	)	
	)	
Rate Regulation	)	

COMMENTS OF CABLEVISION SYSTEMS CORPORATION

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Cablevision Systems Corporation ("Cablevision"), by its attorneys, hereby submits its comments in response to the Third Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

The Commission's tentative conclusion that cable operators should not be permitted to select different regulatory treatment for different tiers of service is premised upon misplaced concerns about regulatory "gaming." Many operators may wish to retain benchmark treatment for the basic tier while pursuing cost-of-service treatment of cable programming services simply to avoid the substantial burdens of having to make separate cost-of-service showings before multiple regulatory bodies. If an operator is subjected to cost-of-service treatment for the basic tier whenever it elects cost-of-service for cable programming services, the Commission's determination of the operator's costs must be made binding upon the local franchising authorities with

jurisdiction over the operator's basic tier. Such a rule is wholly consistent with the 1992 Cable Act and would avoid the imposition of needless, confusing and inconsistent regulatory burdens upon operators.

Also consistent with the regulatory framework it already has developed, the Commission should grant external treatment for the costs of upgrades required by local franchising authorities. The Commission should develop uniform guidelines for the recovery of such costs.

I. CABLE OPERATORS SHOULD NOT BE REQUIRED TO MAKE SEPARATE COST-OF-SERVICE SHOWINGS TO MULTIPLE REGULATORY ENTITIES

The Commission has tentatively concluded that cable operators must elect either the benchmark formula or the cost-of-service proceeding for all regulated tiers, suggesting that this all-or-nothing approach is necessary to protect "tier neutrality" and eliminate "any incentive to 'game' the regulatory process."[1/]

As a threshold matter, it is difficult to see how an operator could "game" the process so that charging a benchmark rate would yield revenues that "far exceed" costs, as the Commission apparently fears.[2/] The Commission itself acknowledges that "the rates on which the benchmark is based were set at a level that enabled operators to fully recover costs,

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1/ Notice at ¶ 149.

2/ Id.

including those incurred for programming."[3/] The relationship between an operator's benchmark-derived rates and its costs is also reflected in the variation in per-channel rates attributable to the number of satellite -- *i.e.*, higher-cost -- channels offered. An operator who uses the cost-related benchmark formula to set its basic rates and the more detailed cost-of-service rules to develop the rates for its cable programming services can hardly be said to be "gaming" the system.

An operator may wish to elect benchmarks to establish its basic rates even if it chooses to pursue cost-of-service treatment for its cable programming services to avoid the significant burden of undertaking multiple cost-of-service showings before both the Commission and local franchising authorities. If Federal and local regulatory authorities can make different cost determinations on the basis of the same data supplied by the same system, cost-of-service will become such an expensive, repetitive and confusing administrative nightmare that it will be rendered useless for practical purposes.[4/]

Moreover, the Commission fundamentally errs when, in opting to require an operator to select benchmarks or cost-of-service for all regulated tiers, it concludes that an operator "elect[ing] the cost-of-service approach . . . will be required

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[3/] Id. at ¶ 142 (emphasis supplied).

[4/] As Cablevision pointed out in its cost-of-service comments, a workable cost-of-service proceeding is a constitutional necessity for ensuring the validity of the benchmark rules. Comments of Cablevision Systems Corporation, MM Docket No. 93-215, at 22-26 (filed Aug. 25, 1993).

to make cost-of-service showings before two different regulatory entities."[5/] On Long Island, for example, Cablevision operates four systems serving a total of 104 separate franchise areas. The Woodbury system alone serves 365,000 subscribers in 73 different franchise areas.[6/] These subscribers benefit from the economies of scale and scope that Cablevision has been able to realize from combining several smaller systems into a single integrated operation. But under the Commission's tentative proposal, that system might be subject to dozens of different cost-of-service rate orders.

Indeed, it is likely that each franchising authority, under political pressure to demonstrate that it has done everything possible to keep cable rates low, would have no choice but to engage in its own cost-of-service proceeding. Consequently, similarly situated subscribers might end up paying markedly different rates for the exact same set of services. Such a result would generate customer confusion, create enormous administrative burdens, and undermine the scale and scope economies that integration has made possible.

The Commission has properly recognized that the needless and confusing administrative burdens described above could be avoided by providing that a cost-of-service determination made by one

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[5/] Notice at ¶ 150 (emphasis supplied).

[6/] Other Cablevision systems serve multiple franchise areas. For instance, the Bangor, Maine system serves 26,000 subscribers in 26 separate franchise areas. The city of Bangor accounts for 7400 of those subscribers, while the remaining 25 franchise areas have anywhere from 68 to 2200 subscribers.

regulatory body would be binding upon the regulatory authorities with jurisdiction over other tiers of service.[7] But the Commission's suggestion leaves open the possibility that a local franchising authority's cost-of-service assessment might govern the Commission's determination of a system's cable programming tier rates under cost of service. This would flatly violate the 1992 Cable Act, since local franchising authorities would then be heavily involved in regulating rates for cable programming service.[8]

Assuming the Commission requires an operator to elect cost-of-service for the basic service tier as well as cable programming services, the only way to ensure that cost-of-service remains a practical and useful alternative to the benchmarks is for the Commission's determination of an operator's costs in a cost-of-service proceeding to be binding on the local franchising authorities with jurisdiction over the operator.[9]

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[7] See Notice at ¶ 152.

[8] 47 U.S.C. § 543(a)(2)(A)(specifying that only "the rates for the provision of basic cable service shall be subject to regulation by a franchising authority").

[9] Unless the Commission authorizes a single regulatory entity to make a uniform cost determination for a particular system, that system can never expect to attain "regulatory finality," since some local regulators may seek to reopen cost-of-service proceedings in order to reconcile variances in cost data assessments between different franchising authorities overseeing the same system.

Such a result would mirror the division of regulatory responsibility embodied in the 1992 Cable Act[10] and reflected in the Commission's benchmark scheme. In the benchmark context, the Commission has developed the relevant rate-setting parameters -- *i.e.*, the appropriate per channel rate which will serve as the basis for evaluating a cable system's rates under the benchmarks -- that are applied both by the Commission and local franchising authorities in their respective jurisdictional spheres. In the proposal described above, the Commission would likewise develop the relevant rate-setting parameters -- *i.e.*, the cost figures that will serve as the basis for evaluating a cable system's rates under cost of service -- with local franchising authorities applying them to the rates for the basic service tier.

Congress intended that the regulatory rules developed by the Commission be the "minimum necessary" to accomplish the task of ensuring reasonable rates for subscribers.[11] Congress also instructed the Commission to develop rate rules which are "not cumbersome for the cable operator to implement nor for the relevant authorities to enforce."[12] The redundancy and unnecessary burdens associated with subjecting the same cable

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[10] See 47 U.S.C. § 543(a)(2)(A)(authorizing local regulation of cable rates, but only "in accordance with the regulations prescribed by the Commission").

[11] S. Rep. No. 92, 102d Cong., 1st Sess. 18 (1991).

[12] H.R. Rep. No. 628, 102d Cong., 2d Sess. 83 (1992); see also 47 U.S.C. § 543(b)(2)(A)(Commission's regulations "shall seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and the Commission").

system to inconsistent assessments of the same cost data by multiple regulatory bodies clashes with both of these objectives. By contrast, a requirement that local franchising authorities must apply the Commission's cost determination would "reduce administrative burdens on cable operators" while "assuring that per channel rates based on the same costs . . . will result in the same per channel rates prior to adjustments for external costs."[13/]

II. THE COMMISSION SHOULD PERMIT EXTERNAL COST TREATMENT OF UPGRADES REQUIRED BY LOCAL FRANCHISING AUTHORITIES

Cablevision concurs with the Commission's tentative conclusion that cable operators should not be forced to initiate a separate cost-of-service proceeding in order to recover system upgrade costs imposed upon them by local franchising authorities. Unless the Commission permits external treatment of such costs, the franchising process will be needlessly prolonged by disputes over upgrade requirements. At a minimum, in the absence of external treatment for such costs, more operators will be forced to undertake cost-of-service showings.

As the Commission implicitly recognizes, local franchising authorities can impose substantial upgrade costs which cannot be recovered without rate adjustments. For example, Cablevision operates a system in Euclid, Ohio serving 12,000 subscribers. The local franchising authority there has demanded that Cablevision upgrade its system from the current 36 channels to a

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[13/] Notice at ¶ 152.

minimum of 500 channels, provide every subscriber home with access to a separate, high-capacity "institutional network," and provide the Euclid city offices with a voice and data "interconnect" to other Ohio municipalities. While not all municipally-imposed upgrades are as elaborate as the example described above, all such upgrades do impose substantial costs which are beyond the control of operators and cannot be recovered through benchmark rates.

The Commission already has determined that franchise fees and the costs of satisfying franchise requirements should be subject to external treatment, since such costs "are largely beyond the control of the cable operator, and should be passed on to subscribers without a cost-of-service showing."[14/] Upgrades required by a franchising authority -- which can impose additional costs of tens or even hundreds of millions of dollars upon an operator -- are likewise beyond the operator's control and should also be treated as external costs.

In conjunction with permitting external treatment of municipally-required upgrades, the Commission should develop uniform guidelines for allocating such costs between the basic tier and other regulated tiers. Local franchising authorities should not be granted discretion to develop methods for adjusting rates to enable recovery of such costs. In the absence of Commission guidelines, local franchising authorities will

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[14/] Rate Regulation (Report and Order and Further Notice of Proposed Rulemaking) 72 R.R.2d 733, at ¶ 254 (1993).

doubtless attempt to minimize the allocation of upgrade costs to the basic service tier, placing disproportionate upward pressure on the rates for cable programming services.

Commission guidelines for the recovery of municipally-imposed upgrade costs are also necessary because a cable system may be subject to local regulation from multiple jurisdictions. For instance, a cable system which serves more than one local franchise area should recover upgrade costs imposed by local franchising authorities under uniform rules. The need for uniform rules is particularly important in areas where a cable operator is subject to both state and municipal regulation. For example, the New York State Cable Television Commission has required Cablevision to upgrade a number of its New York systems.[15/] The company's ability to recover these costs in a full and timely manner might be jeopardized if municipal franchising authorities -- which did not impose, and may not even favor, the upgrade -- could determine the method by which the upgrade costs should be recovered.

CONCLUSION

The Commission should give cable operators discretion to opt for different regulatory treatment of different tiers of service. If the Commission requires operators to choose between benchmarks and cost-of-service for all regulated tiers, its rules must avoid

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15/ See Comments of Cablevision Systems Corporation, MM Docket No. 93-215, at 13 n.22 (filed Aug. 25, 1993).

subjecting cable operators to multiple and inconsistent cost-of-service determinations by Federal and local regulators. Instead, whenever an operator elects cost-of-service, the Commission should make a uniform determination of that system's costs which would then govern the rate-setting proceedings at both the Federal and local levels. The Commission should also ensure swift recovery of upgrade costs imposed upon operators by local franchising authorities by granting external treatment to such costs.

Respectfully submitted,

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